IN THE

Supreme Court of the United States

October Term, 1946

Nos. 1418-~~1419~~

THE NEW YORK CENTRAL RAILROAD COMPANY, NEW JERSEY JUNCTION RAILROAD COMPANY AND ERIE RAILROAD COMPANY,

Petitioners,

v.

HENRY K. NORTON, SUCCESSOR TRUSTEE OF NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,

Respondent.

THE NEW YORK CENTRAL RAILROAD COMPANY, NEW JERSEY JUNCTION RAILROAD COMPANY AND ERIE RAILROAD COMPANY,

Petitioners,

v.

NEW YORK LIFE INSURANCE COMPANY, THE MUTUAL BENEFIT LIFE INSURANCE COMPANY AND THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR HENRY K. NORTON, SUCCESSOR TRUSTEE OF NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, IN OPPOSITION

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Opinions Below

The District Court wrote no opinion, but its findings of fact and conclusions of law appear in the Record at Pt. I, page 457a.*

The opinion of the Circuit Court of Appeals in No. 1418 in its original form appears in the Record at C. App., page 116; the modifications of this opinion, upon the denial of the petitions for rehearing filed by petitioners, appear in the Record at C. App., page 135. The opinion as modified does not appear in the Record, but is reported in 160 F. (2d) 29.

The opinion of the Circuit Court of Appeals in No. 1419 appears in the Record at C. App., page 124, and is reported in 160 F. (2d) 34. The Mutual Benefit Life Insurance Company and The Prudential Insurance Company of America, parties to this matter below, no longer own bonds of the Debtor.

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* The Record filed with the petition consists of (a) the two parts of the Appendix to the Brief in the Circuit Court of Appeals of Henry K. Norton, Successor Trustee, respondent here (appellant below); these are referred to herein as "Pt. I, p. " and "Pt. II, p. "; (b) the Appendix to the Brief in the Circuit Court of Appeals of the New York Central and New Jersey Junction, petitioners here, and appellees below, referred to herein as "C. App., p. "; (c) the additional portions of the record printed for this Court, including the opinions of the Circuit Court of Appeals, the pagination of which follows that of the New York Central Appendix, and which is also referred to as "C. App., p. "; and (d) the Appendix to the Brief in the Circuit Court of Appeals of the Erie Railroad Company, petitioner here, and appellee below, referred to herein as "Erie App., p. ".

Jurisdiction

Petitioners seek to invoke the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

Statutes Involved

Sections 70(b) and 77 of the Bankruptcy Act (11 U. S. C. 110, 205) and Section 1(18) of Part I of the Interstate Commerce Act (49 U. S. C. 1) are involved. The relevant portions of these statutes are printed in an appendix to the petition.

Questions Presented

Did the Circuit Court of Appeals err in holding that the decision of the District Court was premature and that the District Court should await certification to it by the Interstate Commerce Commission of the answers to certain questions?

In addition to this question, the petition raises a number of questions which the Circuit Court of Appeals found not to be decisive of the case, and which are discussed in Points II and III of this Brief, pages 15 to 18, *infra*.

Summary Statement of the Matters Involved

This proceeding arises in the reorganization of the New York, Susquehanna and Western Railroad Company ("Susquehanna") under Section 77 of the Bankruptcy Act.

The late Walter Kidde, then Trustee of the Susquehanna, on August 27, 1942, filed a notice of disaffirmance

of, *inter alia,* two contracts with petitioner, New Jersey Junction Railroad Company ("New Jersey Junction"), which is a subsidiary of petitioner, The New York Central Railroad Company ("New York Central") (Pt. II, p. 483). On petition of the New York Central and New Jersey Junction (Pt. I, p. 5a), and of Erie Railroad Company ("Erie") (Erie App., p. 1a), the District Court set aside this notice of disaffirmance (Pt. I, p. 474a).

The Circuit Court of Appeals, on appeals by respondents, the Successor Trustee of the Susquehanna and several of its creditors, vacated this order of the District Court as premature in the absence of a determination by the Interstate Commerce Commission as to the effect of the public interest on relevant questions to be properly presented to it. The proceeding was remanded to the District Court to await presentation of these questions to the Commission (C. App., pp. 116, 124, 135, 137, 138).

Neither the opinion of the Circuit Court of Appeals nor the petition for certiorari presents the history of these matters. Since this history is necessary to an understanding of the controversy, we include the following statement.

The contracts in question, executed in 1904 and 1911, related to the building and use of certain tracks indicated on the chart opposite this page, which is taken from Pt. I, page 327a. The New York Central, through its subsidiary, petitioner New Jersey Junction, owns the so-called Shore Line Section, which extends from "Bulls Ferry" to "N. Y. C. Interch." on the chart. The Susquehanna is now the owner of the Southern Extension, the Edgewater Terminal and the Northern Extension. These tracks are of importance in furnishing access to industrial properties along the New Jersey shore of the Hudson River.

The Susquehanna, prior to its control by the Erie and prior to the making of the 1904 contract, had constructed the Edgewater Terminal, and has owned it at all times (Pt. I, p. 423a). After 1898, the Erie dominated and controlled the Susquehanna through ownership of approximately 99% of its stock. This domination and control continued until the institution of these reorganization proceedings in 1937 (Pt. I, pp. 198a-201a, 389a-403a, 404a-413a; Pt. II, pp. 8, 10-11).

The 1904 contract was actually negotiated by the New York Central and the Erie (Pt. I, pp. 287a-289a). The contract (Pt. II, pp. 86-99) was entered into between a subsidiary of the New York Central and a wholly owned subsidiary of the Susquehanna. It provided that these subsidiaries would construct the tracks here involved (apart from the Edgewater Terminal, which was already in existence). The Shore Line Section was to be constructed by the New York Central subsidiary, the Southern Extension by the Susquehanna subsidiary, and the Northern Extension by either. (In fact, the Northern Extension was constructed by the Susquehanna subsidiary. Pt. II, p. 12.) Each railroad was to have trackage rights over the tracks so constructed by the other, and was to pay annually for such rights 2% of the cost of the other's section as well as a portion of the taxes and maintenance based on use. The 1904 contract had no termination clause.

These additional tracks were constructed pursuant to the 1904 contract (Pt. II, pp. 11-12). Of the total cost of $447,933.27 of the Northern Extension and Southern Extension, the Susquehanna furnished all but $36,582.77, which was furnished by the Erie (Pt. II, pp. 7-8, 16).

In 1907, the Erie caused the Susquehanna's wholly-owned subsidiary to be merged into a new corporation, Erie Terminals Railroad Company ("Erie Terminals") (Pt. I, p. 433a; Pt. II, pp. 57-63). As a result of this merger 600 of the 680 shares of Erie Terminals stock were issued to the Erie and only 80 to the Susquehanna (Pt. I, p. 462a). In the Susquehanna reorganization proceedings the Trustee, as will be seen presently, attacked this merger as a fraud on the Susquehanna.

The physical connection between the Shore Line Section and the Southern Extension was made in 1911, and the 1911 contract, which also had no termination clause, provided that the Susquehanna would move New York Central cars over the Edgewater Terminal for a reasonable switching charge (Pt. II, pp. 116-127). (The 1904 contract had given the New York Central no right to cross the Edgewater Terminal.) Under supplemental contracts, beginning in 1911, the Susquehanna has performed all the operations on the Northern and Southern Extensions, as well as on the Edgewater Terminal, because the congestion in the territory would render impractical operations by more than one railroad (Pt. I, p. 76a; Pt. II, pp. 13-14). Under these supplemental contracts, all of which provided for termination by either party on short notice, the New York Central has paid the Susquehanna the alleged approximate cost of handling the New York Central cars on the Northern and Southern Extensions, as agreed by representatives of the New York Central and of the Erie system (Pt. II, pp. 154-166) and a flat charge per car for switching these cars across the Edgewater Terminal (Pt. II, pp. 128-157). Under these contracts, the Susquehanna has also performed all operations on the Shore Line Sec-

tion except for certain switching at its south end (Pt. II, pp. 13-14).

Such was the situation when the Susquehanna reorganization proceeding was commenced in 1937.

The Susquehanna Trustee, after an investigation of the facts, concluded that the 1907 merger had been fraudulent as to the Susquehanna. He therefore brought suit against Erie Terminals and the Erie to recover the Northern and Southern Extensions (Pt. II, p. 168). At the same time there were claims and counter-claims between the Susquehanna and the Erie (itself in reorganization in the District Court for the Northern District of Ohio) aggregating approximately $9,000,000 in each direction, and including a preferred claim by the Erie of over $400,000 (Pt. II, pp. 228, 271).

These controversies between the Erie and the Susquehanna were compromised in 1942. The Northern and Southern Extensions were restored to the Susquehanna on payment of about $36,500 to the Erie, this representing the only portion of the cost of these extensions not originally paid by the Susquehanna, but paid by the Erie. The other cross-claims were settled by the payment of $250,000 by the Susquehanna to the Erie (Pt. II, pp. 19-22; Pt. I, pp. 342a-368a).

The Susquehanna Trustee intended, and took great pains, to keep open in the settlement his right to disaffirm the 1904 and 1911 contracts (Pt. I, pp. 143a-145a; Pt. II, p. 384). It was found, however, by the District Court (Pt. I, p. 470a, Conclusions I and II) and by the Circuit Court of Appeals (C. App., p. 119) that in the settlement agreement he had assumed the 1904 and 1911 contracts.

On August 27, 1942, the Susquehanna Trustee filed the notice of disaffirmance of the 1904 and 1911 contracts here in question (Pt. II, p. 483). The considerations which led to his conclusion that these contracts should be disaffirmed, were as follows:

> The territory served by the Susquehanna's Northern and Southern Extensions is heavily industrialized; the territory served by the New York Central's Shore Line Section is sparsely industrialized (Pt. II, p. 15). The fixed annual payment by each road of 2% of the cost of the other's section, provided by the 1904 contract, has resulted in a great disparity in costs as between the two roads. Thus, the Susquehanna, from 1927 to 1943, paid $289,967.27 in interest on the cost of the Shore Line Section, and 9,460 of its cars used that section, so that the interest payments alone averaged $30.65 per car (Pt. I, p. 335a). On the other hand, the New York Central in the same period paid $165,964.69 as interest on the cost of the Northern and Southern Extensions (i.e., the so-called Edgewater Section), while 143,224 of its cars used that section, so that its interest payments averaged only $1.16 per car (Pt. I, p. 335a).
>
> Furthermore, as noted above, the Susquehanna receives from the New York Central only an alleged approximation of cost for handling its cars, although it receives divisions of the through rates on its own traffic to or from the Edgewater industries. The Susquehanna has handled approximately 30,000 of its own cars per year (Pt. I, p. 73a) to or from interchanges with foreign lines (none of which is far distant) on divisions of the through rates averaging about $30 to $35 per car (Pt. I, p. 62a).
>
> It has handled about 10,000 cars per year for the New York Central under the above-mentioned contractual arrangement (Pt. I, p. 64a) at a total com-

pensation, including the $1 switching charge across the Edgewater Terminal (Pt. II, pp. 155-156), averaging about $8.75 per car (C. App., p. 95a).

It is estimated by the Susquehanna Trustee that the 1904 contract results in a loss of net earnings to the Susquehanna in the handling of New York Central traffic of approximately $200,000 a year (Pt. I, pp. 62a-65a).

Therefore, when on July 25, 1942, shortly after the Susquehanna Trustee had recovered the Northern and Southern Extensions from the Erie and had completed the Dieselization of operations at Edgewater in an effort to effect economies (261 I. C. C. 101, 102-103 (1945)), the New York Central requested a cost study with a view to revising the compensation paid to the Susquehanna for the handling of the New York Central's 10,000 cars or so per annum (Pt. I, pp. 369a-371a), the Trustee served his notice of disaffirmance.

The Susquehanna Trustee believed it would be ineffective merely to terminate the operating contracts supplemental to the 1904 contract, which had from time to time fixed the compensation to be paid to the Susquehanna and were by their terms terminable on short notice (page 6, *supra*), and to try to negotiate new charges for handling New York Central cars, because unless such charges were entirely satisfactory to New York Central, the latter had the right physically to exercise its trackage rights under the 1904 contract, have its locomotives compete with those of the Susquehanna on the crowded Northern and Southern Extensions, and thereby create impossible operating conditions on these Extensions (Pt. I, pp. 76a-78a) which are of vital importance to the Susquehanna; and because, in view of the attitude previously taken by the New York Cen-

tral (Pt. I, pp. 65a, 328a, 331a, 334a), it might well do so. Furthermore, the Trustee believed that so long as the New York Central has trackage rights over the Northern and Southern Extensions under the 1904 contract it is within the power of the New York Central and the Erie to enter into arrangements whereby the Erie Edgewater traffic, now interchanged with the Susquehanna at divisions of the through rates, would be routed instead via the New York Central with the result that either the New York Central would handle the traffic itself, exercising its trackage rights, or the Susquehanna would be obliged to handle it at approximately cost (Pt. I, pp. 92a-95a).

On November 5, 1942, the New York Central filed its petition to set aside the Trustee's notice of disaffirmance (Pt. I, p. 5a).

While this petition of the New York Central was pending in the District Court, the plan of reorganization of the Susquehanna was being considered by the Interstate Commerce Commission. After the record on the plan had been closed, the proponents of the plan, in view of the possibility that the petitioners' contention that the Trustee had assumed the contracts and therefore could not disaffirm them might be sustained, in which event the contracts could only be rejected in the plan (Bankruptcy Act, §77b), and in an effort to reconcile the plan to the results of this litigation, whatever they might be, and to permit the plan proceedings and the litigation to proceed simultaneously, suggested in their brief a provision which, in the form finally proposed, read as follows (257 I. C. C. 593, 667 (1944)):

> "However, in the event that it is adjudicated by the highest court to which the question is presented, or

> it otherwise appears from the decision of such court that the agreement dated April 6, 1904, between the Edgewater and Fort Lee Railroad Company and the New Jersey Shore [Line] Railroad Company, or any agreement supplemental thereto, may not be rejected by the trustee of the debtor, but may be rejected in its plan of reorganization, the plan rejects any of said agreements as to which such a decision shall have been reached and the reorganized company shall not be deemed to have assumed them."

No evidence was taken by the Commission on this proposal since "the proposals (sic) that the plan disaffirms the contracts was made for the first time on brief after the close of the hearings" (257 I. C. C. 593, 667 (1944)), but the Commission nevertheless refused to add the provision to the plan, principally on the ground that it was contrary to the public interest (257 I. C. C. 593, 668 (1944); 261 I. C. C. 101, 115-117 (1945)).

Until after all of the foregoing had taken place, it was not generally understood that under Section 1(18) of the Interstate Commerce Act, one carrier could apply for leave for another to abandon operations. Accordingly no such application was made by the Susquehanna Trustee to the Interstate Commerce Commission for leave to the New York Central to abandon operations over these tracks, as the Circuit Court of Appeals ruled should now be done. It will be recalled that it was not until the decision of this Court in *Thompson* v. *Texas Mexican R. Co.*, 328 U. S. 134, decided on April 29, 1946 (one week before the argument of the present case in the Circuit Court of Appeals) that it was ruled that such an application could be made.

The plan of reorganization approved by the Interstate Commerce Commission was certified to the District Court

on March 5, 1945, but in view of the pendency of this litigation, the outcome of which may depend on the availability of rejecting the contracts in the plan, no further action has been taken thereon. However, all the complicated formula matters, lien controversies and inter-company disputes and claims have been concluded, leaving the present controversy as the sole substantial remaining question.

The District Court held that the Susquehanna Trustee had no power to disaffirm the 1904 and 1911 contracts, for various reasons (Pt. I, pp. 457a-473a). The Circuit Court of Appeals, in vacating the decision of the District Court, disagreed with it on most points, but rested its decision on the conclusion that the action of the District Court was premature in the absence of a certification by the Interstate Commerce Commission, after proper proceedings before it, whether in the public interest there should or may be a termination of the New York Central's trackage rights and operations or a change in the Susquehanna's compensation for handling New York Central cars. This conclusion followed from the Court's application to this case of the principles laid down in *Smith* v. *Hoboken R. Co.*, 328 U. S. 123 (1946), and *Thompson* v. *Texas Mexican R. Co.*, 328 U. S. 134 (1946).

Argument

Only three reasons are advanced in the Petition for granting the requested writs. Although the reasons are not definite in their language, it would appear that the arguments in the supporting brief relate to one or another of the aforementioned three reasons, as indicated after the headings which follow. We shall present our answer to each of these briefly.

I.

The Decision of the Circuit Court of Appeals Does Not Conflict With or Misapply the *Tex-Mex* and *Hoboken Railroad* Cases. (Answer to First Reason, Petition, page 8, and Argument, pages 13-15.)

Whether it was the Susquehanna Trustee's notice of disaffirmance, as contended by the Petitioners, or the decision of the District Court, as held by the Circuit Court of Appeals, that was premature, the effect of the holding by the latter Court is that no disaffirmance of the 1904 and 1911 contracts can become effective without a prior application by the Susquehanna estate to the Interstate Commerce Commission under Section 77(o) of the Bankruptcy Act and Section 1(18) of the Interstate Commerce Act for leave to the New York Central to abandon operations over the Northern and Southern Extensions and a ruling by the Interstate Commerce Commission, on such application, that the public interest permits such abandonment.

The argument of the Petitioners on this first phase of their case is thus based on technicalities rather than on substance. If the Petition for writs of certiorari were granted and it were held, as requested by the Petitioners, that the Trustee's notice of disaffirmance rather than the District Court's order was premature, the effect would be the same as that of the decision of the Circuit Court of Appeals, namely, to remit the parties to the Interstate Commerce Commission.

The other fact relied on by the Petitioners in this connection, namely, that the Interstate Commerce Commission has already expressed the view, in the proceedings

on the Plan, that rejection of the 1904 and 1911 contracts in the Plan would not be in the public interest, was, we submit, properly disregarded by the Circuit Court of Appeals which concluded that the Commission should have the entire matter submitted to it. The Commission's reference to this subject was expressed without any evidence being taken on the question of abandonment of operations under Section 1(18) of the Interstate Commerce Act and Section 77(o) of the Bankruptcy Act or, indeed, on any aspect of the question of public interest, because, as noted, page 11, *supra,* the proposal that the Plan should contingently reject the contracts "was made for the first time on brief after the close of the hearings." (257 I. C. C. 593, 667 (1944)).

Under these circumstances, the Circuit Court of Appeals properly held that the entire matter should go to the Commission for primary determination on the public interest questions involved. Reference to the Commission will serve the triple purpose of permitting (a) its views to be determined on a record, (b) the issues to be presented to it correctly, in the light of the *Tex-Mex* case, namely, by an application under Section 1(18) of the Interstate Commerce Act and Section 77(o) of the Bankruptcy Act, and (c), since the Plan has not yet been presented to the District Court for approval, integration with the plan proceedings, the desirability, if not necessity, of which was pointed out by the Circuit Court of Appeals (C. App. p. 123).

The Circuit Court of Appeals had apparent regard for the desirability of not delaying these reorganization proceedings any longer than necessary and for that brigading of the judicial process with the administrative process

of the Commission to which this Court referred in *Palmer et al., Trustees* v. *Massachusetts,* 308 U. S. 79, 87 (1939). In *Thompson* v. *Texas Mexican Ry. Co.,* 328 U. S. 134 (1946), and *Smith* v. *Hoboken R. Co.,* 328 U. S. 123 (1946), this Court remitted the parties to the Commission for an authoritative and timely determination of the administrative phases of questions involved. That is also what has been done here.

II.

No Questions Were Decided by the Circuit Court of Appeals Which Should be Reviewed by This Court with Respect to the Application of Section 77 of the Bankruptcy Act to Rights of Others in Property or Agreements which the Trustee Has Acquired by Assignment or Purchase. (Answer to Second Reason, Petition, page 8, and Argument, pages 15-16 and 18-20.)

There is no clear statement in the Petition or supporting brief as to what the "important questions" are which it is said should be reviewed, but it would appear that the questions are those raised on pages 15-16 and 18-20 of the supporting brief.

The first of the questions raised on pages 15-16 involves whether the Trustee had a legal right to disaffirm agreements which had not been contracts of the Debtor. This is raised by the Petitioners' assumption that the 1904 contract was acquired by the Trustee "through assignment from others." (The Susquehanna was named as a party to the 1911 contract. Pt. II, p. 116.) The Court concluded, however (C. App., p. 119), that the 1904 contract had been a contract of the Debtor (the Susquehanna) at least since 1911, and was part of the estate which came into the Trus-

tee's possession. Whether the 1904 contract was a contract of the Debtor when these reorganization proceedings were instituted was a mixed question of fact and law, relating to events that took place many years ago. It presented no issue whatsoever as to the application of Section 77 of the Bankruptcy Act.

The second question presented on pages 15-16 of the Petitioner's brief, namely, whether the Trustee should be permitted to disaffirm contracts which he had assumed, is not involved at all. Whether he assumed the 1904 and 1911 contracts was a question of fact, or possibly a mixed question of fact and law. Therefore, even though the Trustee did not intend to assume the contracts and endeavored to make that clear (page 7, *supra*), he is compelled to abide by the lower Court's decision that he did assume them.

That does not end the matter, however. Entirely apart from the indication below that the Commission might, in the public interest, require termination of the New York Central's trackage rights regardless of the Trustee's assumption (C. App., pp. 122-123), the effect of the decision that the Trustee assumed the contracts is to remit their disaffirmance to the plan because Section 77(b) provides that the adoption of an executory contract by the Trustee "shall not preclude a rejection of such contract * * * in a plan of reorganization approved hereunder * * *." As stated by the Petitioners in their brief (p. 12):

> "The issues presented to the District Court involved primarily the question whether a right of disaffirmance existed at all—not simply a question whether the Trustee should be permitted to exercise a right of disaffirmance."

The Circuit Court of Appeals properly recognized that the decision that the Trustee had assumed the contracts did not conclude the question whether the contracts can be disaffirmed. There is no dispute, however, that once a Trustee has been held to have assumed contracts, he himself, of his own volition, cannot disaffirm them.

The question of rights in property, the basis for the remaining argument (Pets'. brief, pp. 18-20) in support of the second alleged reason for review, is *whether* the New York Central's subsidiary is vested with property rights in the Northern and Southern Extensions, not *how* vested property rights should be treated under Section 77. Thus no question is raised by this phase of the case under Section 77 of the Bankruptcy Act, and there is no suggestion of any conflict among the Circuits or with applicable local law.

III.

No Important Questions Are Presented Which Should be Reviewed by this Court with Respect to the Administration of the Bankruptcy Act and the Interstate Commerce Act and the Relative Powers and Duties of the Trustee, the District Court and the Interstate Commerce Commission. (Answer to Third Reason, Petition, page 9, and Argument, pages 17-18.)

Again there is no clear statement of what "important questions" are presented. The *Tex-Mex* and *Hoboken Railroad* cases are separately dealt with in the Petition (see Point I herein).

The argument that a collateral attack on an earlier ruling of the Interstate Commerce Commission is involved (Pets'. brief, pp. 17-18) is specious because the effect of the

decision of the Circuit Court of Appeals is to remit the entire matter to the Commission itself.

Moreover, the decision has, as indicated above at several points (pages 14-15, 16, *supra*), the necessary effect of integrating this disaffirmance litigation with the plan proceeding in which, even though the Trustee has assumed the contracts (§77(b)), the final ruling as to whether the contracts shall be rejected must be made in fairness to the other creditors of the estate. Cf. *Group of Inst'l. Investors* v. *C., M., St. P. & P. R. R. Co.*, 318 U. S. 523, at pages 549-550 (1943). The fact that the Trustee's acts which were found to constitute an assumption had judicial approval is of no significance because it is proper at all times for a trustee to obtain approval of an assumption (4 Collier on *Bankruptcy* (14th Ed.) §70.43, p. 1233) yet that does not preclude the rejection in the Plan permitted by Section 77; any Trustee's assumption, however made, is subject as a matter of law to the possibility of rejection in the Plan.

Conclusion

The New York Central and the Erie have for over four years been endeavoring to prevent the disaffirmance on behalf of the Susquehanna of the 1904 and 1911 contracts which were negotiated between the New York Central and the Erie at the Susquehanna's expense. The conclusions of the Circuit Court of Appeals that the contracts are contracts of the Debtor, executory at least in part, and that they did not create any vested interests in property, would establish the legal right to reject these contracts in the Plan, even though assumed by the Trustee, provided that the Commission finds that the public interest permits the New

York Central to abandon its operations over the Southern Extension and the Northern Extension—operations which have never been conducted by it except through the agency of the Susquehanna. The sooner the question of public interest can be brought before the Commission so that a record may be made thereon, the sooner these reorganization proceedings will be consummated.

We submit that the petitions for writs of certiorari should be denied.

Respectfully submitted,

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